



ONE Community Working Together

Legal Options Manual[©]



*For Families,
Consumers and
Caregivers when an
Individual with
Developmental
Disabilities Reaches
Age 18*

**Available FREE to the public.
Not for individual sale.**



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This manual was developed for the Developmental Disabilities Planning Council by the Arizona Center for Disability Law and the Native American Disability Law Center.



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This manual is the joint project of Arizona Developmental Disabilities Planning Council, the Arizona Center for Disability Law and the Native American Disability Law Center. The Council is federally funded and responsible for assuring that individuals with developmental disabilities and their families participate in the design of, and have access to, culturally competent services, supports and other assistance. The Council also supports opportunities that promote independence, productivity and inclusion into the community.

The Arizona Center for Disability Law is a non-profit, public interest law firm providing advocacy, information, referral services, community legal education and, in selected cases, legal representation to individuals with disabilities throughout Arizona. Our mission is to advocate for the legal rights of persons with disabilities to be free from abuse, neglect and discrimination and to gain access to services, maximizing independence and achieving equality. Our vision is a society that focuses on people's abilities rather than disabilities.

The Native American Disability Law Center is a non-profit public interest legal services organization that provides information and referral, direct representation, systemic advocacy and community education services to Native Americans with disabilities. The purpose of the Native American Disability Law Center is to advocate with a generosity of spirit to ensure that Native Americans with disabilities have access to justice and are empowered and equal members of their communities and nations. The mission of the Native American Disability Law Center is to advocate so that the rights of Native Americans with disabilities in the Four Corners area are enforced, strengthened and brought in harmony with their communities.

This guide is available in alternative formats upon request. This guide may be copied and distributed for private use but may not be sold or distributed for profit.

INTRODUCTION

The purpose of this manual is to advise people with disabilities, their families and caregivers about different options that are available when an adult with a disability needs the assistance of someone else in a legally recognized fashion to help manage one or more facets of his or her life. This is not intended as a substitute for legal advice. Federal and state law can change at any time. The publication date of this edition of the manual is located on the front cover; please be sure to check current law for any changes.

“ *I like living on my own, but I have some trouble with remembering to set aside money for all my bills. I have my own job and earn my own money, but I could use some help. How can I give someone the ability to help me with my finances without giving away my independence?*

“ *I think my daughter can live on her own, but I worry that she will spend her Social Security check and won't have money for her bills. How can I help her manage her money without taking away her independence?*

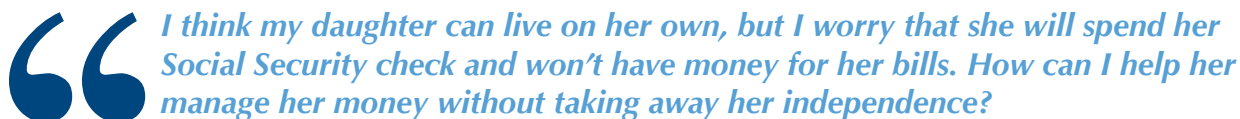
“ *My son just turned 18 and his school is telling me that I am no longer invited to his Individualized Education Plan meeting, but my son still wants me to participate in the IEP process. What can I do?*

“ *I am trying to find out about vocational rehabilitation benefits but I am having a hard time figuring out what I need to do. Can I have someone help me in this process?*

Questions like these are commonplace in the lives of people with disabilities and their families and caregivers. Legal options may range from a student authorizing someone else to participate in his or her Individual Education Plan after the student turns 18, to a full guardianship, which completely restricts a person's right to make any of his or her own personal decisions.

People, whether disabled or not, will make mistakes sometimes. That is a part of life. The purpose of this manual is not to keep individuals with disabilities from life experiences by taking away their rights to make decisions for themselves. Rather, the goal is to recognize when a person with a disability requires additional assistance and to what extent, with the idea that the least restrictive option that preserves as many individual rights as appropriate is best.

REPRESENTATIVE PAYEE



Who needs a representative payee?

A person who is not capable of managing his or her finances and who only receives Social Security benefits (like SSI or SSDI) may benefit from a representative payee to help manage these benefits.

IMPORTANT NOTE:

If a person only receives income from Social Security and he or she cannot manage his or her own benefits to pay monthly expenses, but is otherwise able to live independently in the community, a representative payee may be the only legal option necessary.

However, if the person has other assets that may need management, another legal option such as a conservatorship may be more appropriate.

Who can be appointed as representative payee?

A representative payee should be someone who can manage the Social Security income of another person with that person's best interest and needs in mind. A representative payee can be a family member, caretaker, or friend. If no such person is able to serve as a representative payee, a public or nonprofit agency may also serve as a representative payee. An example of a community organization that may serve as representative payee is Above and Beyond. If a person lives in a residential facility, that entity may be able to serve as a representative payee. **Please note that if you use one of these services, the Social Security Administration ("SSA") may authorize the organization to collect a fee for managing the person's Social Security benefits.**

What does a representative payee do?

A representative payee receives Social Security benefits on behalf of a beneficiary for the purpose of managing these benefits. Specifically, the representative payee must:

- Use the payments only for the use and benefit of the beneficiary and for purposes determined to be in the best interest of the beneficiary (such as payment for rent, medical expenses, food, clothing, savings);
- Notify SSA of any event that will affect the amount of benefits the person should receive (such as an inheritance, or earnings);
- Submit to SSA, upon request, a written report accounting for the benefits;
- Notify SSA of any change in circumstances which would affect the representative payee's performance (such as payee's illness, or a change in relationship to the beneficiary).

The SSA also publishes “A Guide for Representative Payees” (Pub No. 05-10076) and “When a Representative Payee Manages Your Money” (Pub No. 05-10097) available on the Internet at www.ssa.gov/pubs, or by calling toll free at **1-800-772-1213 (voice)** or **1-800-325-0778 (TTY)**.

How is a representative payee appointed?

To apply for appointment as a representative payee, you must complete Form SSA-11, available at your local SSA office, or by calling the numbers listed above. In most cases, the applicant must complete the form in a face-to-face interview at a local SSA office. The SSA will make a decision whether the beneficiary can manage his or her own benefits, and whether the representative payee applicant is an appropriate person to handle the beneficiary's money.

In determining whether a person needs a representative payee, SSA will consider:


- A court determination of incompetency and the need for a guardian;
- Medical evidence of the beneficiary's need for a payee to manage benefits; and
- Statements of friends, relatives and caregivers which contain information on the beneficiary's ability to handle benefits.

The SSA also requires evidence of the applicant's relationship to the beneficiary, and evidence substantiating that the applicant will handle the funds from SSA in a responsible manner that benefits the Social Security recipient.

How is the representative payee terminated or changed?

The SSA provides forms to change or terminate a representative payee appointment. A beneficiary may request a change in payee if he or she feels that person is not expending funds in his or her best interest, or if the relationship between the parties has changed or someone else would be a more appropriate representative payee. A beneficiary who is now able to handle his or her own benefits may also request that the representative payee status be terminated. Call your local SSA office for more information.

DESIGNATED REPRESENTATIVE IN THE VOCATIONAL REHABILITATION PROGRAM

 *I am trying to find out about vocational rehabilitation benefits but I am having a hard time figuring out what I need to do. Can I have someone help me in this process?*

Who needs a Designated Representative in the Vocational Rehabilitation Program?

A person, or **client**, who may need assistance with navigating the Rehabilitation Services Administration to obtain vocational rehabilitation (VR) services may benefit from a designated representative to help him or her through the process.

IMPORTANT NOTE:

A person who may have difficulty speaking up for him or herself in meetings may benefit from having a designated representative.

Who can be appointed as a Designated Representative?

A designated representative can be a friend, parent, relative, advocate, or other person chosen by the client or client's guardian.

What does a Designated Representative do?

The job of a designated representative is to assist the client in protecting his or her rights and voicing his or her service needs. The designated representative acts as the client's representative in the application process, during the development and implementation of an Individualized Plan for Employment (IPE), and during any appeal process.

Once a representative has been designated, the VR program must notify the representative of all meetings involving the client and include the designated representative in any meeting where the client or guardian wants the involvement of the designated representative. The designated representative must act on behalf of the client or guardian at such meetings, voicing service concerns or other issues.

How is a designated representative appointed?

The client or guardian of the client must notify the VR Counselor in writing whom he or she would like to designate. *There is an example form designating a VR Representative at the end of this section.*

How is a designated representative terminated or changed?

The client or client's guardian must inform the VR Counselor in writing that they no longer wish for the designated representative to be involved. If the client or guardian would like to change the designated representative, a new designation form must be provided to the agency.

**Declaration of Designated Representative
for Vocational Rehabilitation**

I, _____, hereby designate the person or organization named below as my representative in the development and implementation of my Individualized Plan for Employment, and in any appeals process, with the Rehabilitation Services Administration, Vocational Rehabilitation Program. This designation shall remain valid until such time I revoke it in writing.

My designated representative is:

Designated Representative's Name

Address

City State Zip Code

Telephone Number

Invoked by my signature this _____ day of _____, _____.

Signature

Date

DESIGNATED REPRESENTATIVE IN MENTAL HEALTH CARE

“*My friend is receiving mental health services through the state, and she has said that she doesn’t feel that her needs and concerns are being heard during treatment and planning. How can I help her?*”

Who needs to designate a mental health representative?

Any person who receives public mental health benefits from a Regional Behavioral Health Authority (RBHA), or a **RBHA member**, is entitled to have a designated mental health representative to help represent the RBHA member’s interests. A RBHA member who wants a representative to help voice his or her needs and concerns can designate a mental health representative anytime.

IMPORTANT NOTE:

A person who may have difficulty speaking up for him or herself in treatment or service planning meetings may benefit from having a designated representative.

Who can serve as a designated mental health representative?

Any person can serve as a mental health representative. If the RBHA member has a guardian, that person may be the representative, or the guardian may appoint someone else. The designated representative can be a friend, parent, relative, advocate, or other person chosen by the RBHA member or guardian to assist the client in protecting his or her rights and voicing his or her service needs.

What does a mental health representative do?

A mental health representative is designated by a RBHA member to act as that member’s representative in staffings, planning meetings, and during the grievance and appeal process. When a representative has been designated, the mental health agency or provider **must** notify the representative of all staffings or meetings involving the member, and include the representative in any staffing or meeting in which the member wants the involvement of the designated representative. The representative must act on behalf of the client or guardian at such staffing or meetings, voicing service concerns or other treatment issues.

How is a designated representative appointed?

The RBHA member or his or her guardian must let the RBHA know in writing who is designated to represent the individual. *There is an example of a form designating a mental health representative at the end of this section.*

How is a designated representative terminated or changed?

The RBHA member or guardian must inform the mental health agency or provider in writing that the designated representative will no longer be serving as the designated mental health representative or that a substitute will replace the former representative.

Declaration of Designated Mental Health Representative

I, _____, hereby designate the person or organization named below as my representative in the development of my Individual Service Plan, and the inpatient and discharge plan, and in any grievance process, pursuant to A.A.C. R9-21-202(A)(17)(c). This designation shall remain valid until such time I revoke it in writing.

My designated representative is:

Designated Representative's Name

Address

City

State

Zip Code

Telephone Number

Invoked by my signature this _____ day of _____, _____.

Signature

Date

SPECIAL EDUCATION TRANSFER OF PARENTAL RIGHTS

“*My son just turned 18 and his school is telling me that I am no longer invited to his Individualized Education Plan meeting, but my son still wants me to participate in the IEP process. What can I do?*”

Who could benefit from delegating the right to make educational decisions?

A student between the ages of 18 to 22 who is still attending high school and receiving assistance through the Individualized Education Plan (IEP) process may benefit from having a representative to help the student make educational decisions. The student must be able to give informed consent for the person's involvement. If the student is under guardianship, then a transfer of rights is not necessary.

IMPORTANT NOTE:

The Delegation of Right to Make Educational Decisions is only an option if the student reaching age 18 wants a designated individual to remain involved and can give informed consent for this involvement.

Who can be designated to take over parental rights?

A student between the ages of 18 to 22, who is not under guardianship, can designate any person to assume the rights afforded to parents or guardians under the Individuals with Disabilities Education Act. If a student is under a guardianship, those rights remain with the guardian when the student turns 18.

What does a transfer of parental rights do?

When a student with a disability reaches age 18—no longer a minor in the eyes of the law—all parental rights under special education laws become the rights of the student, unless he or she is under guardianship. Transferring these rights to someone else allows another person to make educational decisions on behalf of the student.

How is a special education transfer of rights declaration made?

A student transferring the right to make educational decisions completes a form like the one provided at the end of this section, which should be signed and notarized by both the student and the student's choice of representative. The student may also make his or her intentions known by audio, video or any other means necessitated by the student's disability. The completed form or other means of expressed intent should be given to school personnel on the student's IEP team.

A Delegation of Right to Make Educational Decisions is only effective for one year from the date of execution. It must be renewed in writing by the student for each year it is to remain in effect. The student may terminate the transfer of rights at any time. The transfer also terminates when the student graduates.

Delegation of Right to Make Educational Decisions


I, _____, am eighteen years of age but under twenty-two years of age and a pupil who has the right to make educational decisions for myself under state and federal law. I have not been declared legally incompetent, and as of the date of the execution of this document, I delegate my right to give consent and to make decisions concerning educational matters to _____, who will be considered my “parent” for the purposes of 20 United States Code section 1401 and will exercise all the rights and responsibilities concerning my education that are conferred on a parent pursuant to state and federal law. I understand and give my consent that _____ will make all decisions relating to my education on my behalf. I understand that I am entitled to be present during the development of any individualized education plan and that any issues or concerns I may have will be addressed. This delegation will be in effect for one year from today’s date and may be renewed only by my written or formal authorization. I understand that I have the right to terminate this agreement at any time and resume the right to make decisions regarding my education.

Student name & date

Notary designation and signature

Note: If not by writing, this delegation may be given by audio or video means, or in an alternative format necessitated by the pupil’s disability.

ADVANCED DIRECTIVES FOR HEALTH AND MENTAL HEALTH CARE, AND LIVING WILLS

 *I want to make sure that my wishes about my physical and mental health are honored even if I become unable to speak for myself in the future. What can I do to protect my interests?*

Who could benefit from designating another person to make health or mental health care decisions for him or her in the future?

Any person who is of sound mind (legally competent) and wants to make sure his or her decisions about health or mental health care treatment will be honored in the future could benefit from an advanced health or mental health care directive or a living will appointing someone to carry out his or her wishes in the event he or she is unable to do so.

IMPORTANT NOTE:

Advanced directives and living wills determine what future treatment will be, so it is critically important that the person who is making these future decisions has the capacity now to understand what the directive means.

Who can be appointed to carry out an advanced health care directive or living will?

Any person can be appointed to carry out an advanced health or mental health care directive or living will. Like many of the other options covered in this manual, the appointee should be someone who will ensure that the wishes of the individual preparing the directive or living will are honored.

What does an advanced directive or living will do?

Advanced health care directives and living wills allow a person to appoint someone else to make his or her health care or mental health care decisions in the event the person becomes incompetent or unable to give consent in the future. They can also ensure that an individual's wishes are followed regarding health or mental health care at a time when he or she cannot express these wishes. For any of these options to be valid, a person must be able to understand and consent to the treatment choices he or she is making.

The different types of directives include:

- **Health Care Advanced Directive/Durable Health Care Power of Attorney:** This option allows a person to choose a representative to make health care decisions in the event that the person making the appointment becomes incompetent. The document can provide specific directions to the representative regarding a person's wishes for his or her future health care decisions. The representative will have the authority to make health care decisions consistent with the person's wishes in the event the person executing the document becomes incompetent.
- **Mental Health Care Advanced Directive/Durable Mental Health Care Power of Attorney:** This document allows an individual to appoint a representative who can admit the individual to a behavioral health facility in the event the individual needs such treatment. The directive may also include preferences for mental health medication and treatment. *Sample forms from the Attorney General's Office website are available at the end of this section.*
- **Living Will:** A living will indicates what treatments, procedures or interventions a person either wants or wishes to refuse, typically at the end of life when that person can no longer state his or her preferences. The living will covers situations such as when to resuscitate, and when to use a feeding tube, ventilator or other extraordinary measures to prolong a person's life. *A sample form from the Attorney General's Office website is available at the end of this section.*

How are advanced directives and living wills set up?

Advanced directive forms are available at the end of this section. Additional forms can be obtained from the Office of the Attorney General's website, www.azag.gov (click on "Life Care Planning" link), or by calling (602) 542-2123.

How is an advanced directive terminated or changed?

An advanced directive can be terminated at any time until the person executing it becomes incompetent. A mental health care advanced directive may be terminated at any time—even if the person making the directive is incompetent.

STATE OF ARIZONA
DURABLE HEALTH CARE POWER OF ATTORNEY
Instructions and Form

GENERAL INSTRUCTIONS: Use this Durable Health Care Power of Attorney form if you want to select a person to make future health care decisions for you so that if you become too ill or cannot make those decisions for yourself the person you choose and trust can make medical decisions for you. Talk to your family, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctor, clergy person and a lawyer before you sign this form.

Be sure you understand the importance of this document. If you decide this is the form you want to use, complete the form. **Do not sign this form until** your witness or a Notary Public is present to witness the signing. There are further instructions for you about signing this form on page three.

1. Information about me: (I am called the "Principal")

My Name: _____ My Age: _____
My Address: _____ My Date of Birth: _____
_____ My Telephone: _____

2. Selection of my health care representative and alternate: (Also called an "agent" or "surrogate")

I choose the following person to act as my representative to make health care decisions for me:

Name: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

I choose the following person to act as an alternate representative to make health care decisions for me if my first representative is unavailable, unwilling, or unable to make decisions for me:

Name: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

3. What I AUTHORIZE if I am unable to make medical care decisions for myself:

I authorize my health care representative to make health care decisions for me when I cannot make or communicate my own health care decisions due to mental or physical illness, injury, disability, or incapacity. I want my representative to make all such decisions for me except those decisions that I have expressly stated in Part 4 below that I do not authorize him/her to make. If I am able to communicate in any manner, my representative should discuss my health care options with me. My representative should explain to me any choices he or she made if I am able to understand. This appointment is effective unless and until it is revoked by me or by an order of a court.

The types of health care decisions I authorize to be made on my behalf include but are not limited to the following:

- To consent or to refuse medical care, including diagnostic, surgical, or therapeutic procedures;
- To authorize the physicians, nurses, therapists, and other health care providers of his/her choice to provide care for me, and to obligate my resources or my estate to pay reasonable compensation for these services;
- To approve or deny my admittance to health care institutions, nursing homes, assisted living facilities, or other facilities or programs. By signing this form I understand that I allow my representative to make decisions about my mental health care except that generally speaking he or she cannot have me admitted to a structured treatment setting with 24-hour-a-day supervision and an intensive treatment program – called a "level one" behavioral health facility – using just this form;

DURABLE HEALTH CARE POWER OF ATTORNEY (Cont'd)

- To have access to and control over my medical records and to have the authority to discuss those records with health care providers.

4. DECISIONS I EXPRESSLY DO NOT AUTHORIZE my Representative to make for me:

I do not want my representative to make the following health care decisions for me (describe or write in "not applicable"):

5. My specific desires about autopsy:

NOTE: Under Arizona law, an autopsy is not required unless the county medical examiner, the county attorney, or a superior court judge orders it to be performed. See the General Information document for more information about this topic. Initial or put a check mark by one of the following choices.

- ☐ Upon my death I DO NOT consent to (want) an autopsy.
☐ Upon my death I DO consent to (want) an autopsy.
☐ My representative may give or refuse consent for an autopsy.

6. My specific desires about organ donation: ("anatomical gift")

NOTE: Under Arizona law, you may donate all or part of your body. If you do not make a choice, your representative or family can make the decision when you die. You may indicate which organs or tissues you want to donate and where you want them donated. Initial or put a check mark by A or B below. If you select B, continue with your choices.

- ☐ A. I DO NOT WANT to make an organ or tissue donation, and I do not want this donation authorized on my behalf by my representative or my family.
☐ B. I DO WANT to make an organ or tissue donation when I die. Here are my directions:

1. What organs/tissues I choose to donate: (Select a or b below)

- ☐ a. Any needed parts or organs.
☐ b. These parts or organs:
1.) _____
2.) _____
3.) _____

2. What purposes I donate organs/tissues for: (Select a, b, or c below)

- ☐ a. Any legally authorized purpose (transplantation, therapy, medical and dental evaluation and research, and/or advancement of medical and dental science).
☐ b. Transplant or therapeutic purposes only.
☐ c. Other: _____

3. What organization or person I want my parts or organs to go to:

- ☐ a. I have already signed a written agreement or donor card regarding organ and tissue donation with the following individual or institution: (Name) _____
☐ b. I would like my tissues or organs to go to the following individual or institution: (Name) _____
☐ c. I authorize my representative to make this decision.

DURABLE HEALTH CARE POWER OF ATTORNEY (Cont'd)

7. Funeral and Burial Disposition: (Optional)

My agent has authority to carry out all matters relating to my funeral and burial disposition wishes in accordance with this power of attorney, which is effective upon my death. My wishes are reflected below:

Initial or put a check mark by those choices you wish to select.

☐ Upon my death, I direct my body to be buried. (As opposed to cremated)

☐ Upon my death, I direct my body to be buried in _____. (Optional directive)

☐ Upon my death, I direct my body to be cremated.

☐ Upon my death, I direct my body to be cremated with my ashes to be _____. (Optional directive)

☐ My agent will make all funeral and burial disposition decisions. (Optional directive)

8. About a Living Will:

NOTE: If you have a Living Will and a Durable Health Care Power of Attorney, **you must attach** the Living Will to this form. A Living Will form is available on the Attorney General (AG) web site. Initial or put a check mark by box A or B.

☐ **A.** I have SIGNED AND ATTACHED a completed Living Will in addition to this Durable Health Care Power of Attorney to state decisions I have made about end of life health care if I am unable to communicate or make my own decisions at that time.

☐ **B.** I have NOT SIGNED a Living Will.

9. About a Prehospital Medical Care Directive or Do Not Resuscitate Directive:

NOTE: A form for the Prehospital Medical Care Directive or Do Not Resuscitate Directive is available on the AG Web site. Initial or put a check mark by box A or B.

☐ **A.** I and my doctor or health care provider HAVE SIGNED a Prehospital Medical Care Directive or Do Not Resuscitate Directive on paper with ORANGE background in the event that 911 or Emergency Medical Technicians or hospital emergency personnel are called and my heart or breathing has stopped.

☐ **B.** I have NOT SIGNED a Prehospital Medical Care Directive or Do Not Resuscitate Directive.

HIPAA WAIVER OF CONFIDENTIALITY FOR MY AGENT/REPRESENTATIVE

☐ **(Initial)** I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164.

SIGNATURE OR VERIFICATION

A. I am signing this Durable Health Care Power of Attorney as follows:

My Signature: _____ Date: _____

B. I am physically unable to sign this document, so a witness is verifying my desires as follows:

Witness Verification: I believe that this Durable Health Care Power of Attorney accurately expresses the wishes communicated to me by the principal of this document. He/she intends to adopt this Durable Health Care Power of Attorney at this time. He/she is physically unable to sign or mark this document at this time, and I verify that he/she directly indicated to me that the Durable Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Health Care Power of Attorney at this time.

DURABLE HEALTH CARE POWER OF ATTORNEY (Cont'd)

Witness Name (printed): _____
Signature: _____ Date: _____

SIGNATURE OF WITNESS OR NOTARY PUBLIC:

NOTE: At least one adult witness OR a Notary Public must witness the signing of this document and then sign it. The witness or Notary Public CANNOT be anyone who is: (a) under the age of 18; (b) related to you by blood, adoption, or marriage; (c) entitled to any part of your estate; (d) appointed as your representative; or (e) involved in providing your health care at the time this form is signed.

A. Witness: I certify that I witnessed the signing of this document by the Principal. The person who signed this Durable Health Care Power of Attorney appeared to be of sound mind and under no pressure to make specific choices or sign the document. I understand the requirements of being a witness and I confirm the following:

- I am not currently designated to make medical decisions for this person.
- I am not directly involved in administering health care to this person.
- I am not entitled to any portion of this person's estate upon his or her death under a will or by operation of law.
- I am not related to this person by blood, marriage or adoption.

Witness Name (printed): _____
Signature: _____ Date: _____
Address: _____

Notary Public (NOTE: If a witness signs your form, you DO NOT need a notary to sign):

STATE OF ARIZONA) ss
COUNTY OF _____)

The undersigned, being a Notary Public certified in Arizona, declares that the person making this Durable Health Care Power of Attorney has dated and signed or marked it in my presence and appears to me to be of sound mind and free from duress. I further declare I am not related to the person signing above by blood, marriage or adoption, or a person designated to make medical decisions on his/her behalf. I am not directly involved in providing health care to the person signing. I am not entitled to any part of his/her estate under a will now existing or by operation of law. In the event the person acknowledging this Durable Health Care Power of Attorney is physically unable to sign or mark this document, I verify that he/she directly indicated to me that this Durable Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Health Care Power of Attorney at this time.

WITNESS MY HAND AND SEAL this ____ day of _____, 20____.
Notary Public _____ My Commission Expires: _____

**OPTIONAL:
STATEMENT THAT YOU HAVE DISCUSSED
YOUR HEALTH CARE CHOICES FOR THE FUTURE
WITH YOUR PHYSICIAN**

NOTE: Before deciding what health care you want for yourself, you may wish to ask your physician questions regarding treatment alternatives. This statement from your physician is not required by Arizona law. If you do speak with your physician, it is a good idea to have him or her complete this section. Ask your doctor to keep a copy of this form with your medical records.

DURABLE HEALTH CARE POWER OF ATTORNEY (Last Page)

On this date I reviewed this document with the Principal and discussed any questions regarding the probable medical consequences of the treatment choices provided above. I agree to comply with the provisions of this directive, and I will comply with the health care decisions made by the representative unless a decision violates my conscience. In such case I will promptly disclose my unwillingness to comply and will transfer or try to transfer patient care to another provider who is willing to act in accordance with the representative's direction.

Doctor Name (printed): _____
Signature: _____ Date: _____
Address: _____

**STATE OF ARIZONA
DURABLE MENTAL HEALTH CARE POWER OF ATTORNEY
Instructions and Form**

GENERAL INSTRUCTIONS: Use this Durable Mental Health Care Power of Attorney form if you want to appoint a person to make future mental health care decisions for you if you become incapable of making those decisions for yourself. The decision about whether you are incapable can only be made by an Arizona licensed psychiatrist or psychologist who will evaluate whether you can give informed consent. Be sure you understand the importance of this document. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctor, clergy person, and a lawyer before you sign this form.

If you decide this is the form you want to use, complete the form. **Do not sign this form until** your witness or a Notary Public is present to witness the signing. There are more instructions about signing this form on page 3.

1. Information about me: (I am called the "Principal")

My Name: _____ My Age: _____
My Address: _____ My Date of Birth: _____
_____ My Telephone: _____

2. Selection of my health care representative and alternate: (Also called an "agent" or "surrogate")

I choose the following person to act as my representative to make mental health care decisions for me:

Name: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

I choose the following person to act as an alternate representative to make mental health care decisions for me if my first representative is unavailable, unwilling, or unable to make decisions for me:

Name: _____ Home Telephone: _____
Street Address: _____ Work Telephone: _____
City, State, Zip: _____ Cell Telephone: _____

3. Mental health treatments that I AUTHORIZE if I am unable to make decisions for myself:

Here are the mental health treatments I authorize my mental health care representative to make on my behalf if I become incapable of making my own mental health care decisions due to mental or physical illness, injury, disability, or incapacity. If my wishes are not clear from this Durable Mental Health Care Power of Attorney or are not otherwise known to my representative, my representative will, in good faith, act in accordance with my best interests. This appointment is effective unless and until it is revoked by me or by an order of a court. My representative is authorized to do the following **which I have initialed or marked**:

- _____ **A. About my records:** To receive information regarding mental health treatment that is proposed for me and to receive, review, and consent to disclosure of any of my medical records related to that treatment.
- _____ **B. About medications:** To consent to the administration of any medications recommended by my treating physician.
- _____ **C. About a structured treatment setting:** To admit me to a structured treatment setting with 24-hour-a-day supervision and an intensive treatment program licensed by the Department of Health Services, which is called a "level one" behavioral health facility.
- _____ **D. Other:** _____

DURABLE MENTAL HEALTH CARE POWER OF ATTORNEY (Cont'd)

4. **Durable Mental health treatments that I expressly DO NOT AUTHORIZE if I am unable to make decisions for myself:** (Explain or write in "None")

5. **Revocability of this Durable Mental Health Care Power of Attorney:** This Durable Mental Health Care Power of Attorney is made under Arizona law and continues in effect for all who rely upon it except those who have received oral or written notice of its revocation. Further, I want to be able to revoke this Durable Mental Health Care Power of Attorney as follows: (Initial or mark A or B.)

- _____ A. This Durable Mental Health Care Power of Attorney is IRREVOCABLE if I am unable to give informed consent to mental health treatment.
- _____ B. This Durable Mental Health Care Power of Attorney is REVOCABLE at all times if I do any of the following:
- 1.) Make a written revocation of the Durable Mental Health Care Power of Attorney or a written statement to disqualify my representative or agent.
 - 2.) Orally notify my representative or agent or a mental health care provider that I am revoking.
 - 3.) Make a new Durable Mental Health Care Power of Attorney.
 - 4.) Any other act that demonstrates my specific intent to revoke a Durable Mental Health Care Power of Attorney or to disqualify my agent.

6. **Additional information** about my mental health care treatment needs (consider including mental or physical health history, dietary requirements, religious concerns, people to notify and any other matters that you feel are important):

HIPAA WAIVER OF CONFIDENTIALITY FOR MY AGENT/REPRESENTATIVE

_____ (Initial) I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164.

SIGNATURE OR VERIFICATION

- A. I am signing this Durable Mental Health Care Power of Attorney as follows:

My Signature: _____ Date: _____

- B. I am physically unable to sign this document, so a witness is verifying my desires as follows:

Witness Verification: I believe that this Durable Mental Health Care Power of Attorney accurately expresses the wishes communicated to me by the Principal of this document. He/she intends to adopt this Durable Mental Health Care Power of Attorney at this time. He/she is physically unable to sign or mark this document at this time. I verify that he/she directly indicated to me that the Durable Mental Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Mental Health Care Power of Attorney at this time.

Witness Name (printed): _____

Signature: _____ Date: _____

DURABLE MENTAL HEALTH CARE POWER OF ATTORNEY (Last Page)

SIGNATURE OF WITNESS OR NOTARY PUBLIC

NOTE: At least one adult witness OR a Notary Public must witness the signing of this document and then sign it. The witness or Notary Public CANNOT be anyone who is: (a) under the age of 18; (b) related to you by blood, adoption, or marriage; (c) entitled to any part of your estate; (d) appointed as your representative; or (e) involved in providing your health care at the time this document is signed.

A. Witness: I affirm that I personally know the person signing this Durable Mental Health Care Power of Attorney and that I witnessed the person sign or acknowledge the person's signature on this document in my presence. I further affirm that he/she appears to be of sound mind and not under duress, fraud, or undue influence. He/she is not related to me by blood, marriage, or adoption and is not a person for whom I directly provide care in a professional capacity. I have not been appointed as the representative to make medical decisions on his/her behalf.

Witness Name (printed): _____
Signature: _____ Date and time: _____
Address: _____

B. Notary Public: (NOTE: If a witness signs your form, you DO NOT need a notary to sign)

STATE OF ARIZONA) ss
COUNTY OF _____)

The undersigned, being a Notary Public certified in Arizona, declares that the person making this Durable Mental Health Care Power of Attorney has dated and signed or marked it in my presence and appears to me to be of sound mind and free from duress. I further declare I am not related to the person signing above, by blood, marriage or adoption, or a person designated to make medical decisions on his/her behalf. I am not directly involved in providing care as a professional to the person signing. I am not entitled to any part of his/her estate under a will now existing or by operation of law. In the event the person acknowledging this Durable Mental Health Care Power of Attorney is physically unable to sign or mark this document, I verify that he/she directly indicated to me that the Durable Mental Health Care Power of Attorney expresses his/her wishes and that he/she intends to adopt the Durable Mental Health Care Power of Attorney at this time.

WITNESS MY HAND AND SEAL this ____ day of _____, 20____.
Notary Public: _____ My commission expires: _____

**OPTIONAL:
REPRESENTATIVE'S ACCEPTANCE OF APPOINTMENT**

I accept this appointment and agree to serve as agent to make mental health treatment decisions for the Principal. I understand that I must act consistently with the wishes of the person I represent as expressed in this Durable Mental Health Care Power of Attorney or, if not expressed, as otherwise known by me. If I do not know the Principal's wishes, I have a duty to act in what I, in good faith, believe to be that person's best interests. I understand that this document gives me the authority to make decisions about mental health treatment only while that person has been determined to be incapacitated which means under Arizona law that a licensed psychiatrist or psychologist has the opinion that the Principal is unable to give informed consent.

Representative Name (printed): _____
Signature: _____ Date: _____

STATE OF ARIZONA
LIVING WILL (End of Life Care)
Instructions and Form

GENERAL INSTRUCTIONS: Use this Living Will form to make decisions now about your medical care if you are ever in a terminal condition, a persistent vegetative state or an irreversible coma. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. It is your written directions to your health care representative if you have one, your family, your physician, and any other person who might be in a position to make medical care decisions for you. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctor, clergy person and a lawyer before you complete and sign this Living Will.

If you decide this is the form you want to use, complete the form. **Do not sign the Living Will until** your witness or a Notary Public is present to watch you sign it. There are further instructions for you about signing on page 2.

**IMPORTANT: If you have a Living Will and a Durable Health Care Power of Attorney,
you must attach the Living Will to the Durable Health Care Power of Attorney.**

1. Information about me: (I am called the "Principal")

My Name: _____ My Age: _____
My Address: _____ My Date of Birth: _____
My Telephone: _____

2. My decisions about End of Life Care:

NOTE: Here are some general statements about choices you have as to health care you want at the end of your life. They are listed in the order provided by Arizona law. You can initial any combination of paragraphs A, B, C, and D. **If you initial Paragraph E, do not initial any other paragraphs.** Read all of the statements carefully before initialing to indicate your choice. You can also write your own statement concerning life-sustaining treatments and other matters relating to your health care at Section 3 of this form.

- _____ **A. Comfort Care Only:** If I have a terminal condition I do not want my life to be prolonged, and I do not want life-sustaining treatment, beyond comfort care, that would serve only to artificially delay the moment of my death. (NOTE: "Comfort care" means treatment in an attempt to protect and enhance the quality of life without artificially prolonging life.)
- _____ **B. Specific Limitations on Medical Treatments I Want:** (NOTE: Initial or mark one or more choices, talk to your doctor about your choices.) If I have a terminal condition, or am in an irreversible coma or a persistent vegetative state that my doctors reasonably believe to be irreversible or incurable, I do want the medical treatment necessary to provide care that would keep me comfortable, but **I do not want the following:**
- _____ 1.) Cardiopulmonary resuscitation, for example, the use of drugs, electric shock, and artificial breathing.
- _____ 2.) Artificially administered food and fluids.
- _____ 3.) To be taken to a hospital if it is at all avoidable.
- _____ **C. Pregnancy:** Regardless of any other directions I have given in this Living Will, if I am known to be pregnant I do not want life-sustaining treatment withheld or withdrawn if it is possible that the embryo/fetus will develop to the point of live birth with the continued application of life-sustaining treatment.
- _____ **D. Treatment Until My Medical Condition is Reasonably Known:** Regardless of the directions I have made in this Living Will, I do want the use of all medical care necessary to treat my condition until my doctors reasonably conclude that my condition is terminal or is irreversible and incurable, or I am in a persistent vegetative state.
- _____ **E. Direction to Prolong My Life:** I want my life to be prolonged to the greatest extent possible.

**STATE OF ARIZONA
LIVING WILL ("End of Life Care") (Cont'd)**

3. Other Statements Or Wishes I Want Followed For End of Life Care:

NOTE: You can attach additional provisions or limitations on medical care that have not been included in this Living Will form. Initial or put a check mark by box A or B below. Be sure to include the attachment if you check B.

- A.** I have not attached additional special provisions or limitations about End of Life Care I want.
 B. I have attached additional special provisions or limitations about End of Life Care I want.

SIGNATURE OR VERIFICATION

A. I am signing this Living Will as follows:
My Signature: _____ Date: _____

B. I am physically unable to sign this Living Will, so a witness is verifying my desires as follows:

Witness Verification: I believe that this Living Will accurately expresses the wishes communicated to me by the principal of this document. He/she intends to adopt this Living Will at this time. He/she is physically unable to sign or mark this document at this time. I verify that he/she directly indicated to me that the Living Will expresses his/her wishes and that he/she intends to adopt the Living Will at this time.

Witness Name (printed): _____
Signature: _____ Date: _____

SIGNATURE OF WITNESS OR NOTARY PUBLIC

NOTE: At least one adult witness OR a Notary Public must witness you signing this document and then sign it. The witness or Notary Public CANNOT be anyone who is: (a) under the age of 18; (b) related to you by blood, adoption, or marriage; (c) entitled to any part of your estate; (d) appointed as your representative; or (e) involved in providing your health care at the time this document is signed.

- A. Witness:** I certify that I witnessed the signing of this document by the Principal. The person who signed this Living Will appeared to be of sound mind and under no pressure to make specific choices or sign the document. I understand the requirements of being a witness. I confirm the following:
- ◆ I am not currently designated to make medical decisions for this person.
 - ◆ I am not directly involved in administering health care to this person.
 - ◆ I am not entitled to any portion of this person's estate upon his or her death under a will or by operation of law.
 - ◆ I am not related to this person by blood, marriage, or adoption.

Witness Name (printed): _____
Signature: _____ Date: _____
Address: _____

B. Notary Public: (NOTE: a Notary Public is only required if no witness signed above)


STATE OF ARIZONA _____) ss
COUNTY OF _____)

The undersigned, being a Notary Public certified in Arizona, declares that the person making this Living Will has dated and signed or marked it in my presence, and appears to me to be of sound mind and free from duress. I further declare I am not related to the person signing above, by blood, marriage or adoption, or a person designated to make medical decisions on his/her behalf. I am not directly involved in providing health care to the person signing. I am not entitled to any part of his/her estate under a will now existing or by operation of law. In the event the person acknowledging this Living Will is physically unable to sign or mark this document, I verify that he/she directly indicated to me that the Living Will expresses his/her wishes and that he/she intends to adopt the Living Will at this time.

WITNESS MY HAND AND SEAL this _____ day of _____, 20____.

Notary Public: _____ My commission expires: _____

DURABLE POWER OF ATTORNEY

 *I like living on my own, but I have some trouble with remembering to set aside money for all my bills. I have my own job and earn my own money, but I could use some help. How can I give someone the ability to help me with my finances without giving away my independence?*

Who needs a durable power of attorney?

A person who is of sound mind (legally competent) and who wants to designate someone else to act as his or her **agent**, to make financial decisions on behalf of the person, or **principal**, could benefit from a durable power of attorney.

IMPORTANT NOTE:

The advantage of this legal option is that it does not require court intervention and is less expensive and less complicated than a conservatorship. However, because there is no court oversight it is extremely important that the *agent* be someone who can be trusted to care for the *principal's* needs and to manage the money and assets wisely.

Who may be designated as an “agent” under the durable power of attorney?

An agent should be someone who can make the important financial decisions that the principal gives the agent the authority to make. An agent could be a spouse, family member, friend, or any other person who will act in the principal's best interest.

What does an agent under the durable power of attorney do?

A durable power of attorney document is a document that allows one person, the principal, to give someone else, the agent, the authority to handle his or her financial affairs now, or at some designated time in the future. For a durable power of attorney to be valid, the principal who designates the agent must be able to understand and give consent for another person to handle his or her financial affairs at the time the power of attorney is signed. The durable power of attorney may specify what financial decisions the principal wants the agent to make. For example, the power of attorney could be limited to paying bills, or may be entrusted to handle all financial decisions for the principal. The power of attorney also indicates whether it is effective immediately, or only upon incapacity of the principal.

Unlike a conservatorship, there is no court oversight of a durable power of attorney. This means the agent does not have to report expenditures to the court on a regular basis. However, an agent may be criminally prosecuted if he or she does not use the money or property for the benefit of the principal.

How is a durable power of attorney made?

In order to be effective, a durable power of attorney form must be completed and signed by the principal, witnessed and notarized. If a power of attorney is only needed for a person's finances, the individual's bank or financial institution may have a durable power of attorney form available for clients. Be sure to check with your bank or financial institution for specific requirements for designating a power of attorney to be sure that you meet the bank requirements.

Durable powers of attorney can take many forms and can cover a variety of legal decision making powers; it may be worthwhile to consult an attorney to help make sure that whatever document you use is legally enforceable for the purposes you intend.

How is a durable power of attorney changed or terminated?

The document establishing a power of attorney may specify when it expires. The principal may also revoke the power of attorney by tearing up the original document or by executing a revocation document. The principal may terminate the power of attorney at any time so long as the individual is not incapacitated. If the principal becomes incapacitated, any interested person who believes the agent is not acting in the principal's best interest may contact the county attorney regarding the matter.

CONSERVATORSHIP

“*My brother was involved in a car accident and sustained a serious brain injury that resulted in permanent disability. As a result of the accident, he received a large settlement, but because of his injury, I am concerned that he will not be able to manage this settlement, and I want to make sure that his needs are taken care of. What can I do to help?*”

Who needs a conservatorship?

A person who is not capable of managing his or her finances and who owns property or has income or other assets may benefit from a court appointed conservator. A conservator acts as a person's financial manager, appointed to oversee all the person's assets and property. **If a person's only income is from SSI or SSDI, a representative payee would be more appropriate than a conservatorship.**

IMPORTANT NOTE:

More than one type of legal decision making authority can exist at a time. For example, a conservatorship may be obtained at the same time as a guardianship and the same person could act as both.

Having both a guardian and a conservator is only advised where the person is deemed incompetent *and* has significant assets.

Who can be appointed as a conservator?

Any person can serve as a conservator. However, the court will be more likely to appoint someone as a conservator who has been nominated as power of attorney for the person needing a conservator, someone who is a close relative of the person, or the person's caretaker. A private fiduciary, professional guardian or conservator, or the Department of Veteran's Services may also serve as a conservator. If no person is available, a public fiduciary may serve as a conservator. *See Appendix A for a list of public fiduciaries.*

What does a conservator do?

A conservator is also known as a fiduciary. This means the conservator has certain duties to make decisions about the person's money or property, with the best interest of the protected person in mind. The conservator's work is monitored; the conservator has the responsibility of keeping records and reporting back to the court about the status of the assets he or she is in charge of managing. The conservator must make good decisions about how to handle the assets and must make sure money is accessible to pay for the care, support and education of the protected person. A conservator may be appointed for a single transaction or on a continuing basis.

How is a conservator appointed?

A petition is filed with the court requesting appointment of a conservator. An attorney will be appointed to represent the person to be protected, unless he or she already has one. If the individual to be protected has a mental illness or disability, the court will appoint an investigator to interview this person and request appropriate medical or psychological evaluations to make sure that a conservatorship is appropriate. Written reports will be submitted to the court and a hearing will be held. If the court finds the basis for a conservatorship or any other protective order has been established, the court will appoint a conservator or enter appropriate protective orders as necessary.

How can a conservatorship be terminated or changed?

Because a conservatorship is a legal relationship, it must be managed through the court. A petition may be filed at any time by the protected person or other interested parties explaining why a termination or change in conservator is appropriate.

What are the costs associated with conservatorship?

If the person requesting the conservatorship does not hire an attorney, the only costs are usually the court filing fee (as of the publication date shown on the front cover, the fees are \$251 in Maricopa County; \$186 in Pima County) and service of process/delivery of the documents to the person with a disability (between \$30-\$100 depending on the location of the potential protected person). Maricopa County residents will also pay a \$400 probate court investigation fee.

If the court finds that the person to be protected is not in need of conservatorship, the court can charge the individual bringing the conservatorship petition with any costs related to services of a court-appointed attorney for the person to be protected. Alternatively, if the court finds the person is in need of conservatorship, the costs associated with setting up the conservatorship, such as fees for the protected person's attorney or other persons appointed by the court to evaluate the protected person will come out of the protected person's money or a court fund.

Attorney's fees will vary for performing a conservatorship and may depend on the nature and complexity of the issues. A conservatorship requires regular annual accountings to the court. If the accountings are complex, the assistance of an attorney or accountant may be necessary. Additionally, **Maricopa County charges a fee of \$300.00** for reviewing and approving the annual accounting.

GUARDIANSHIP

“ *My nephew is an adult with a developmental disability. He lives in a group home and does many things independently, but recently he has been taken advantage of, and he entered into a contract that was not in his best interest. I am worried that a power of attorney is not enough to protect him, and I feel helpless. What else can I do?*

Who needs guardianship?

An incapacitated person, or **ward**, is someone who lacks the ability to make or communicate responsible decisions concerning life's most basic needs. Appointment of a guardian can help to protect the ward by giving power to a guardian to manage certain decisions about a ward's life. Because a guardianship is the most restrictive legal option for a person, it should only be considered when an individual is very limited in his or her ability to make even the most basic decisions. A guardianship incorporates the job of the Designated Representative in Mental Health Care, the Durable Mental Health and/or Health Care Power of Attorney, Designated Representative in Vocational Rehabilitation Program, and gives the guardian the right to make educational decisions.

IMPORTANT NOTE:

Guardianship requires court intervention, time and expense, and seriously curtails a person's independence. Persons under a full guardianship may not vote or drive a vehicle, cannot enter a contract and need a guardian's consent for activities ranging from going to a party to decisions on where to live, what to eat or even when to seek medical help.

Guardianship should only be considered as a last resort when other legal options such as representative payee, power of attorney, or conservatorship are not enough to ensure the person with a disability will be safe and able to access the services he or she needs.

Who can be appointed as guardian?

A guardian should be someone who can make important life decisions for a ward with the best interests of the ward in mind. A guardian could be the spouse, parent or adult child of the ward, or any other relative with whom the ward has resided for more than six months. If no family member is able to serve, a private fiduciary or professional guardian may also be appointed. Each county also has a public fiduciary, required by law to serve as guardian for persons who don't have anyone to serve as a guardian for them. The public fiduciary will be appointed by the court in a guardianship proceeding. *See Appendix A for more information about public fiduciaries in your area.*

What does a guardian do?

A guardian has duties and responsibilities similar to what would be expected of a parent. The guardian must make sure that the ward's basic needs are met and that decisions are made with the ward's desires taken into account. Guardianship laws require the guardian of a ward to seek services that are in the ward's best interest. The guardian should take into consideration the ward's age, disability, and what is necessary to keep the ward safe. The guardian is responsible for ensuring the ward lives in the least restrictive environment appropriate.

A court order appointing a guardian should include which specific decision making powers are granted to the guardian. Different types of guardianships result in different levels of decision making authority; some of the different types of guardianship include:

- **Guardian Ad Litem:** A guardian appointed for a specified time period or a limited purpose. For example, a person may need a guardian for purposes of filing a personal injury claim resulting from an automobile accident. The guardian could assist a person in filing, litigating and settling the claim and arranging for the proceeds to be protected and, once the matter is settled, the guardianship terminates.
- **Temporary Guardian:** A guardian appointed immediately by a court in emergency circumstances. An attorney will be appointed to represent the person for whom guardianship is being considered.
- **Limited Guardianship:** A guardian appointed to make decisions about an individual's rights in certain limited areas, such as contracts or health care choices. In this situation, the ward would retain other rights. A limited guardianship is preferred over a full guardianship, with the goal to keep as much decision making authority with the individual as possible.
- **Full Guardianship:** A guardian authorized to make **all** life decisions for the ward, including making decisions about the individual's living arrangements, education, social activities, medical care, right to marry and association with others.

The court will request the guardian to submit an annual written report to the court, including information on the ward's health and living conditions.

When should a guardian be appointed?

If you are trying to determine whether a guardianship might be appropriate for someone you know, think about the following:

- Is the individual likely to make decisions which will place him or her in danger?
- Is the individual being denied health care or other services because providers are concerned about the individual's ability to understand his or her treatment?
- Even after getting advice or help from family members, friends or caregivers, is the individual unable to make important decisions about where to live, how to get a job, or other services?
- Have treating providers suggested that the individual does not have the capacity to make decisions?

How is a guardian appointed?

Because a guardianship significantly reduces a person's ability to make decisions for him or herself, the process to appoint a guardian requires a court determination that clear and convincing evidence shows that a guardianship relationship is appropriate. Any person may initiate the appointment of a guardian by filing a petition with the Superior Court in the county where the potential ward lives. After receiving the petition, the court will set a hearing date to make its determination about the guardianship. Unless the potential ward is already represented by an attorney, the court will appoint an attorney to represent the person at the hearing. The court will also appoint a court investigator to interview the potential ward and guardian, and to visit the place where the ward is living. In addition, a doctor, psychologist or registered nurse will be appointed by the court to examine the ward. These experts will submit written reports to the court, and a hearing will be conducted to determine whether a guardianship is appropriate. *See Appendix B for Guardianship resources.*

How is guardianship terminated or changed?

A guardianship may be changed or terminated at any time it is shown that a change would be in the best interest of a protected person. A ward or other interested person may also petition the court at any time for a change of guardian or termination of guardianship.


What are the costs associated with guardianship?

If the person requesting the guardianship files without an attorney, the out-of-pocket costs include the court filing fee (as of the publication date shown on the front cover, **\$251 in Maricopa County; \$186 in Pima County**) and the service of process/delivery of documents to the person who will be under guardianship (between \$30 - \$100 depending on the location of the potential protected person). Maricopa County residents will also pay a \$400 probate court investigation fee. If the court finds that the person with a disability is not in need of a guardian, it may assess the costs of the court-appointed attorney for the person with the disability to the individual bringing the guardianship petition. If the court finds the person is in need of guardianship, the costs associated with the guardianship such as fees for the ward's attorney or other persons appointed by the court to evaluate the ward will come out of the ward's money or a court fund. Attorney's fees for performing a guardianship will vary depending on the nature and complexity of the issues. For example, if the guardianship petition is contested, a trial may result in considerable cost to all parties. In many cases, a less restrictive, less costly, and less complicated option is available.

What if the person who needs a guardianship is not a U.S. citizen?

Arizona permits a person to become a guardian of a foreign citizen if the person who requires guardianship is under 18 years old and has either a temporary visa or is a legal permanent resident of the United States.

GUARDIANSHIPS IN INDIAN COUNTRY

 *I believe that a guardianship is the most appropriate legal option for my son, but I live on a reservation. How do I go about initiating a guardianship that will be effective on the reservation?*

This section will focus on guardianships only. Most of the other legal options described in this manual work the same way on tribal lands. If a less restrictive option is available and appropriate for your situation, it is worthwhile to consider those first.

Where do I go to get a guardianship?

In order for a court to issue an enforceable order, it must have jurisdiction or authority over the people involved in the case and the subject of the case. Typically, when a person lives on a reservation, the tribe's courts will have jurisdiction over the issues that arise in that area. Because of the tribe's sovereignty, these tribal courts have jurisdiction over family matters, including guardianships. Even if a state court will issue an order of guardianship, it may be considered unenforceable since the state court may not have proper jurisdiction.

IMPORTANT NOTE:

It is important to respect the sovereignty of individual tribal communities. If an individual with a disability lives on a reservation, the state court does not have jurisdiction and cannot issue a valid order of guardianship. If a tribe does not have statute or code, then families should consider the alternatives outlined in other parts of this manual, such as representative payee or power of attorney.

How do I get a guardianship in tribal court?

Every tribe in Arizona has sovereign authority over its internal affairs. The tribe has the authority to make decisions about how its community is governed and how it decides the issues facing tribal members. Arizona has 21 federally recognized tribes and each has its own court system and laws. How a person obtains a guardianship depends on where the person lives. Although each tribe may have different laws, there are some common aspects to the guardianship process.

Generally, the tribe will require that a petition be filed with the court. The person filing the petition must be a legal adult — at least 18 years old. Some tribes, like the Fort McDowell Yavapai community, require that the individual filing the petition be a member of the tribe. Most of the tribes that have a guardianship code include requirements similar to those outlined in this manual's section on guardianship.

Many tribes have similar standards for determining whether an individual needs a guardian. Typically, the threshold is whether or not an individual is unable to care for him or herself and his or her property. The Fort McDowell Yavapai community also requires a finding that the individual have an "unsound mind." The White Mountain Apache Tribe adds that the individual may also be "likely to be deceived by artful and designing persons if a guardian were not appointed." The Colorado River Indian Tribe specifies that the inability to

manage property or care for him or herself is caused “by the reason of infirmities of aging, developmental disabilities, or other like incapacities.” Because different tribes have written the code in different ways, it is important to look at the specific code governing the specific tribe involved.

Which tribes have guardianship codes?

- Ak Chin Indian Community of the Maricopa Indian Reservation
- Colorado River Indian Tribes of the Colorado River Indian Reservation
- Fort McDowell Yavapai Nation
- Havasupai Tribe of the Havasupai Reservation
- Hopi Tribe of Arizona
- Pascua Yaqui Tribe of Arizona
- Quechan
- Salt River
- Tohono O’odham Nation of Arizona
- White Mountain Apache Tribe of the Fort Apache Reservation

Some tribes have elected to follow state law if they do not have a tribal law to address a specific issue or if it does not conflict with any other tribal law:

- Fort Mojave Indian Tribe
- Gila River Indian Community of the Gila River Indian Reservation
- Hualapai Indian Tribe of the Hualapai Indian Tribe Reservation
- Yavapai Prescott Tribe of the Yavapai Reservation

Although the tribe allows the use of the state law, the tribal court still has jurisdiction. So an individual seeking a guardianship in these communities uses the process outlined in the Guardianship section of this manual, but files the papers in the community’s tribal court.

What resources are available?

If a person lives in a tribal community and is a member of that community, consult with the local legal services office or tribal court to see if they have a copy of the law and any forms that can be used. The person should also consider the other options outlined in this manual.

TRUSTS

“*Our son loves going to Diamondback games and I want to make sure that he is always able to attend the games in the Southwest. If we give the money for the games and travel directly to our son, he will become ineligible for his Social Security benefits. Is there anything we can do to protect his benefits and still send him to see his favorite team?*”

Who needs a specialized trust?

A person who wants to maintain financial eligibility for government programs such as Social Security and who also has funds available from some other source may benefit from a specialized trust. Because eligibility for certain government programs depends on a person's income, a trust allows for certain monies to be set aside for a person, or the **beneficiary** of the trust, to be used for certain purposes. The money that goes into the trust could be from an inheritance or settlement, or money that a beneficiary's friend or family member wants to set aside on his or her behalf.

IMPORTANT NOTE:

Unlike the other legal options discussed, a trust is not something that families can create by following instructions in a self-help manual like this. Establishing a special needs trust requires the expertise of an attorney who specializes in this area of the law because creating a trust that works for an individual's specific circumstances requires a professional who understands the trust options that are available.

What does a specialized trust do?

A specialized trust includes parameters about what the trust money can and cannot be spent on. By including these limitations, the trust allows for the beneficiary of the trust to receive disbursements from the trust for certain purposes without jeopardizing a beneficiary's eligibility for certain government programs.

How is a special needs trust established?

There are a wide variety of options available for persons who want to create a trust that preserves a beneficiary's ability to maintain eligibility for certain programs. It is important to seek the expertise of a specialized attorney. Along with the Arizona Center for Disability Law, some of the resources listed in Appendix C may be able to provide referrals to attorneys who are experienced in preparing this type of specialized trust.

APPENDIX

A

ARIZONA PUBLIC FIDUCIARIES

Apache County Patricia Hall 75 W. Cleveland, 2 nd Floor St. Johns, AZ 85936 (928) 337-7627	Greenlee County Nora Garza 223 Fifth St. Clifton, AZ 85533 (928) 865-2323	Pima County Anita Royal 32 N. Stone Ave., 4 th Floor Tucson, AZ 85701 (520) 740-5454
Cochise County Vicki Haviland 4 Ledge Ave. Bisbee, AZ 85603 (520) 432-9660	La Paz County Vivian Hartless 1105 West 14 th Street Parker, AZ 85344 (928) 669-6163	Pinal County Joan Sacramento 500 S. Central Ave. Florence, AZ 85132 (520) 866-7252
Coconino County Patricia Powers 2625 N. King St., 2 nd Fl. Flagstaff, AZ 86004 (928) 679-7441	Maricopa County Gary Strickland 222 N. Central Ave., Ste 4100 Phoenix, AZ 85004 (602) 506-5801	Santa Cruz County Rita Luz Ashford 2150 N. Congress Dr. Nogales, AZ 85621 (520) 375-7960
Gila County Tiffany Poarch 1100 E. Monroe St. Globe, AZ 85501 (928) 425-3149	Mohave County Catherine Robbins 700 W. Beale St. Kingman, AZ 86401 (928) 718-4959	Yavapai County Shari Tomlinson 500 S. Marina St. Prescott, AZ 86303 (928) 771-3153
Graham County Sherrie Lines 820 W. Main St. Safford, AZ 85546 (928) 428-4441	Navajo County Sherry Reed 100 E. Code Talkers Dr. Holbrook, AZ 86025 (928) 524-4353	Yuma County Candy Wheeler-Ruby 3007 S. Pacific Avenue Yuma, AZ 85365 (928) 373-1145

APPENDIX B

COUNTY RESOURCES FOR GUARDIANSHIP FORM

County	What form is used?	Where do I find forms?
Apache	Modified* Maricopa County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.superiorcourt.maricopa.gov Apache County Clerk of Court: (928) 337-7550
Cochise	Modified Maricopa or other Arizona county forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.superiorcourt.maricopa.gov Cochise County Clerk of Court: (520) 432-8580
Coconino	Cononino County forms	www.coconino.az.gov www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx Coconino County Clerk of Court: (928) 679-7600
Gila	Modified Maricopa County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx Gila County Clerk of Court: (928) 425-3231
Graham	Modified Maricopa or other Arizona county forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx Graham County Clerk of Court: (928) 428-3100
Greenlee	Modified Maricopa or other Arizona county form, modified to "Greenlee County"	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx Greenlee County Clerk of Court: 928) 865-4242
La Paz	Modified Maricopa County form	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx La Paz County Clerk of Court: (928) 669-6131
Maricopa	Maricopa County forms <i>May have some assistance available</i>	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.superiorcourt.maricopa.gov (court forms) Maricopa County Clerk of Court: (602) 506-3730 Maricopa County Bar Association: (602) 257-4434
Mohave	Mohave County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.mohavecourts.com Mohave County Clerk of Court: (928) 753-0713
Navajo	Modified Pima or Maricopa County forms, substituting "Navajo" County	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx Navajo County Clerk of Court: (928) 524-4188
Pima	Pima County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.cosc.co.pima.az.us Pima County Clerk of Court: (520) 740-3200 Pima County Bar Association: 177 N. Church Ave., Tucson (520) 623-8258

Pinal	Pinal County forms	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx www.pinalcountyz.gov/Departments/JudicialBranch Pinal County Clerk of Court: (520) 866-5300
Santa Cruz	Modified Maricopa or Pima County form	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx Santa Cruz County Clerk of Court: (520) 375-7700
Yavapai	Yavapai County forms	www.co.yavapai.az.us/clerkspct.aspx Yavapai County Clerk of Court: (928) 777-3062
Yuma	Modified Maricopa County form	www.azcourts.gov/selfservicecenter/SelfServiceForms.aspx Yuma County Clerk of Court: (928) 817-4083

Forms can also be obtained at your Clerk of Superior Court's office, and may be available at your area's legal aid office (CLS, SALA, or DNA People's Legal Services). See Resource List for contact information.

***Modified:** If on-line form allows, replace "Maricopa" or "Pima" with your county, and modify otherwise as appropriate. If you are not able to modify form on line, print the form, cross out the County, and write in the proper county for your document.

APPENDIX C

ADDITIONAL RESOURCES

The following sources may be useful regarding various options covered in this manual. You may wish to explore these resources for additional information pertinent to your specific needs. This information is current as of the publication date of this manual. The agencies are listed for information and reference purposes, and are not specifically endorsed by the publishers of this manual.

Resource	Website /Contact Information
Above and Beyond Representative Payee Service (Tucson)	Phone: (520) 903-1733
Area Agency on Aging (Region 1) (Phoenix)* <i>Information and referral services for issues on guardianship—call Senior HELP LINE (602) 264-HELP (4357). Check website for other information or services available.</i> <i>*Area Agencies on Aging have offices throughout the State as well. Visit the “Disability Resources” link at www.azdes.gov for further information on your area’s office.</i>	www.aaaphx.org Phone: (602) 264-2255 Toll Free: (888) 783-7500
ARC of Arizona <i>Check website for information. Website provides email address. No longer provides guardianship services after June 2011.</i>	www.arcarizona.org Phone: (877) 574-3033 (voice message system)
Arizona Advance Directive Registry <i>This website, provided by the Arizona Secretary of State, is designed to provide information, registration and free secure storage of a person’s advance directives, i.e., living will, medical power of attorney or mental health power of attorney.</i>	www.azsos.gov/adv_dir/ Phone: (602) 542-6187 Toll free: (800) 458-5842
Arizona Attorney General’s Office <i>This website provides valuable information concerning life planning—explanations, videos, FAQs and documents that can be viewed, downloaded, or requested. The forms are identical to those provided as examples in this manual.</i>	www.azag.gov Phone: (602) 542-2124 Toll Free: (800) 352-8431
Arizona Bridge to Independent Living (ABIL) (Phoenix area) <i>Center focused on programs that empower individuals with disabilities in achieving independent living skills. See website for all services provided.</i>	www.abil.org Phone: (602) 256-2245 TTY: (602) 296-0591 Toll Free: (800) 280-2245
Arizona Center for Disability Law <i>Non-profit public interest law firm and protection and advocacy agency protecting the rights of persons with disabilities. Does not provide services regarding options mentioned in this manual—information and referral only. Check website for other services provided.</i>	www.azdisabilitylaw.org Phone: (602) 274-6287 (Voice/TTY) Toll Free: (800) 927-2260 (Voice/TTY)

Resource	Website /Contact Information
Arizona Commission for the Deaf and Hard of Hearing <i>Statewide center offering services and referral information for persons with hearing loss.</i>	www.acdhh.org Phone: (602) 542-3323 TTY: (602) 364-099 Toll Free Voice/TTY: (800) 352-8161
Arizona Department of Veterans' Services <i>For information regarding fiduciary (conservatorship and guardianship) services.</i>	www.azdvs.gov Phone: (602) 255-3373
Arizona Governor's Council on Spinal and Head Injuries <i>Resource for information, services and support for persons with traumatic brain or spinal cord injuries, and those who support them.</i>	www.azheadspine.org Phone: (602) 542-3947
Arizona Judicial Courts <i>Self-service forms relating to guardianship or conservatorship are provided for use in some Arizona counties listed on this website.</i>	www.azcourts.gov/selfservicecenter/Self-ServiceForms.aspx
Arizona Secretary of State <i>Provides secure storage of advance directives; link to Attorney General's Life Planning Documents.</i>	www.azsos.gov (602) 542-4285
Arizona Senior Citizens Law Project <i>Serves Maricopa County. Must be over 60. Provides guardianship services.</i>	Phone: (602) 252-6710
Arizona State Bar ("State Bar of Arizona") <i>Provides information about finding an attorney—no direct referrals.</i>	www.azbar.org Phone: (602) 252-4804 Toll Free from outside Maricopa County: (866) 482-9227
AZ Law Help <i>Website providing a wide array of information and links, including resources for finding legal help.</i>	www.AZLawHelp.org
Community Legal Services, Inc. (Central Phoenix area) <i>May provide some guardianship services; must qualify for services. CLS has multiple offices in Phoenix area and western counties of Arizona, including Mohave, Yavapai and Yuma. Check website for listings, and contact for information on guardianship.</i>	www.clsaz.org Phone: (602) 258-3434 Toll Free: (800) 852-9075 TTY: (602) 254-9852
Developmental Disabilities Planning Council <i>(Successor to "Governor's Council on Developmental Disabilities" which disbanded in July 2009.)</i>	www.azgovernor.gov/ddpc Phone: (602) 542-8970 Toll Free: (877) 665-3176

Resource	Website /Contact Information
DNA People’s Legal Services <i>May provide some guardianship services; 10 locations serving both off-reservation and tribal land communities of Northeastern Arizona. Low Income--must qualify for services. See website for office locations and information.</i>	www.dnalegalservices.org Phone: (928) 871-4151
Guardianship or Conservatorship forms, instructions <i>County Court forms and some information can be found on your County Clerk of Court’s website, or at the Arizona Judicial Branch website. Not every county has its own form at this time, but you may modify another county’s form as needed. You can also obtain the forms from your local Clerk’s office.</i> Although an attorney is not required to file for guardianship, it is still a good idea to consult a professional to ensure that you are submitting paperwork appropriate for your needs.	www.azcourts.gov/selfservicecenter/Self-ServiceForms.aspx
Lawyer Referral Service (Maricopa County Bar Association) <i>30 minute consultation for \$35; check website for information regarding this service.</i>	www.maricopabar.org Phone: (602) 257-4434
Lawyer Referral Service (Pima County Bar Association) <i>30 minute consultation for \$35; and QUILT program for persons who are low income, but don’t qualify for legal aid; check website or call for information regarding these services. Guardianship forms available.</i>	www.pimacountybar.org Phone: (520) 623-4625
Maricopa County Superior Court, Clerk’s Office <i>Provides general court information, some self-service forms and filing fee information. The website provides phone numbers for specific departments; for filing fees or forms call (602) 506-3730.</i>	www.clerkofcourt.maricopa.gov/ Phone: (602) 506-3763
NAELA (National Academy of Elder Law Attorneys) <i>Information about special needs trusts, and finding an attorney experienced in preparing special trusts.</i>	www.naela.org Phone: (703) 942-5711
Native American Disability Law Center <i>Agency serving and protecting the legal rights of Native Americans with disabilities in the four corners area of Arizona, Colorado, New Mexico and Utah. Check website for services provided.</i>	www.nativedisabilitylaw.org Phone: (800) 862-7271
Northern Arizona Council of Governments (NACOG) - Elder Rights Unit, Area Agency on Aging <i>Serving Apache, Coconino, Navajo and Yavapai Counties, may provide some information concerning guardianships or referral to attorneys. Must be 60 years of age.</i>	www.nacog.org Phone: (928) 774-1895

Resource	Website /Contact Information
Pima Council on Aging (PCOA) (Pima County) <i>No direct assistance regarding options in this book, but may provide referrals to attorneys. Must be age 60 or over.</i>	www.pcoa.org PCOA HELPLINE: (520) 790-7262
Pima County Superior Court, Clerk's Office <i>Provides general court information, some self-service forms, including guardianship and conservatorship, and filing fee information.</i>	www.cosc.pima.gov/ Phone: (520) 740-3200
Social Security Administration <i>Check this website for information about representative payee issues.</i>	www.ssa.gov Toll Free: (800) 772-1213 TTY: (800) 325-0778
Southern Arizona Legal Aid (SALA) <i>May provide some assistance with guardianship; must qualify for services. SALA has offices serving Apache, Gila and Navajo Counties, Cochise, Graham/Greenlee Counties, Pima County, Pinal County and Santa Cruz County. Check website for specific office locations and numbers, and service availability.</i>	www.sazlegalaid.org Phone: (520) 623-9465 Toll Free: (800) 640-9465
Special Needs Alliance (SNA) <i>Website provides information about special needs trusts, guardianship, conservatorship, and other associated issues. Resource for locating attorneys experienced in public entitlements and special needs planning.</i>	www.specialneedsalliance.com/home Phone: (877) 572-8472
Special Needs Answers <i>Website provided by Academy of Special Needs Planners, information about special needs trusts and related matters; finding an attorney.</i>	www.specialneedsanswers.com



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877-665-3176 (Toll Free) • 602-542-8977 (Office)
www.azgovernor.gov/DDPC